APPEAL NO. 032216
FILED OCTOBER 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on July 14, 2003. The hearing officer determined that the respondent (claimant herein) suffered a compensable injury on _____, and that the claimant had disability beginning on December 10, 2002, and continuing through the date of the CCH. The appellant (carrier herein) files a request for review, contending that the claimant did not prove his injury was compensable because he did not show a causal connection between his work and his injury, which it contends was due to simply walking or to an ordinary disease of life. The carrier argues that, absent a compensable injury, the claimant could not have disability. The claimant responds that he did suffer a compensable injury at work when he twisted his knee pushing a shopping cart, which was part of his duties for his employer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

There was conflicting evidence presented on the disputed issues of injury and disability. The issues of injury and disability are questions of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues.

Nor do we find legal error. While the carrier argues that its videotape showed that the claimant's injury took place when he was walking, the hearing officer as fact finder accepted the claimant's testimony that he was injured pushing a cart and that he twisted his knee. The hearing officer rejected the carrier's theory that the claimant's injury was due to either merely walking or to an ordinary disease of life. We do not find the great weight of the evidence contrary to that determination.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

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Margaret L. Turner
Appeals Judge